

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660
www.co.mo.md.us/council/hearing.html

IN THE MATTER OF:
CTG OIL INC.

Contract Purchaser

James R. Crawford
Lee Cunningham
James Fieser
Raymond L. Frazier
Antoine Haddad
Philip E. Perrine
Peter Pitman

For the Application

Stanley D. Abrams, Esquire

Attorney for the Applicant

Bryan Radin

In Opposition to the Application

David Winer, Esquire

Attorney for Mr. Radin

Before: Françoise M. Carrier, Hearing Examiner

Zoning Application No. G-799

HEARING EXAMINER'S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

Application No. G-799, filed on May 28, 2002 by CTG Oil, Inc., requests reclassification from the Town Sector and C-5 Zones to the C-3 Zone of two parcels, P742 (0.43 acres, Town Sector Zone) and P770 (0.51 acres, C-5 Zone), comprising 40,811 square feet of land (.94 acres) located in the southeast quadrant of the intersection of relocated MD Route 118 and Middlebrook Road, between MD

118 and Walter Johnson Road, Germantown, in the 9th Election District. The application was filed under the Optional Method authorized by Code § 59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging.

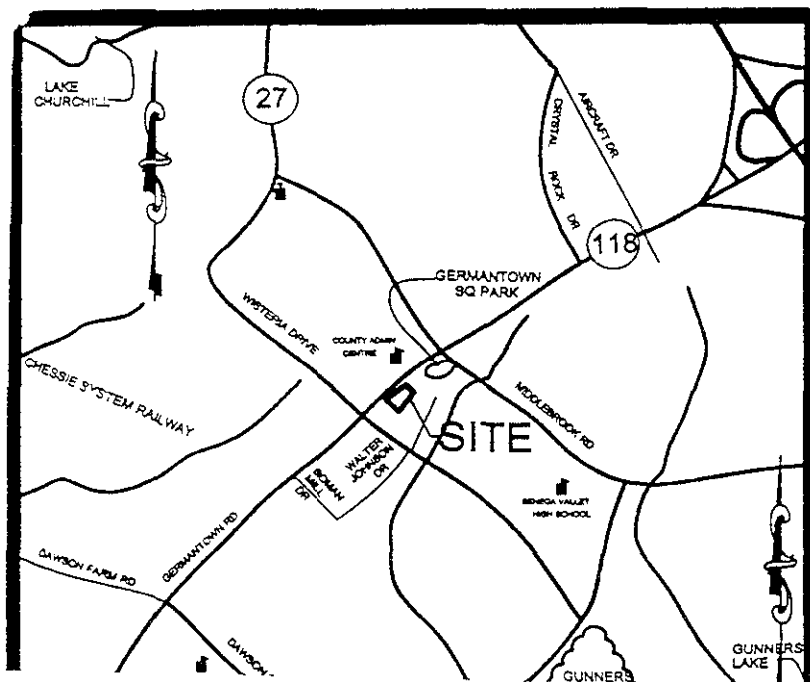
Technical Staff of the Maryland-National Capital Park and Planning Commission ("M-NCPPC") reviewed the application and, in a report dated July 25, 2002, recommended *approval*. On August 1, 2002, three members of the Montgomery County Planning Board ("Planning Board") considered the application and voted, 3-to-0, to recommend *approval*. A public hearing was convened on August 14, 2002 at which testimony was received both in support of and in opposition to the application. The record was held open until September 9, 2002 to receive supplemental submissions from the Applicant, an opposition party, and Technical Staff. The record was subsequently re-opened on September 16, 2002 to receive a revised site plan and other exhibits submitted by the Applicant, and was held open until noon on October 11, 2002 for public comment.

II. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Conflicts in the evidence are resolved under the preponderance of the evidence test.

A. The Subject Property

As shown on the area map below, the subject property is located in Germantown, in the southeast quadrant of the intersection of MD 118 (Germantown Road) and Middlebrook Road, just northeast of Wisteria Drive.



The subject property occupies a roughly rectangular, wedge-shaped area that bridges MD 118 and Walter Johnson Road and makes up part of a block bordered on the north by Middlebrook Road and on the south by Wisteria Drive. The property has frontage on MD 118, a major highway with six lanes, but is precluded from vehicular access to MD 118 by record plat notation. Access to this and adjacent developed parcels is from Walter Johnson Road, a commercial business district street that terminates in a hammerhead (three-point turnaround) immediately north of the subject property.

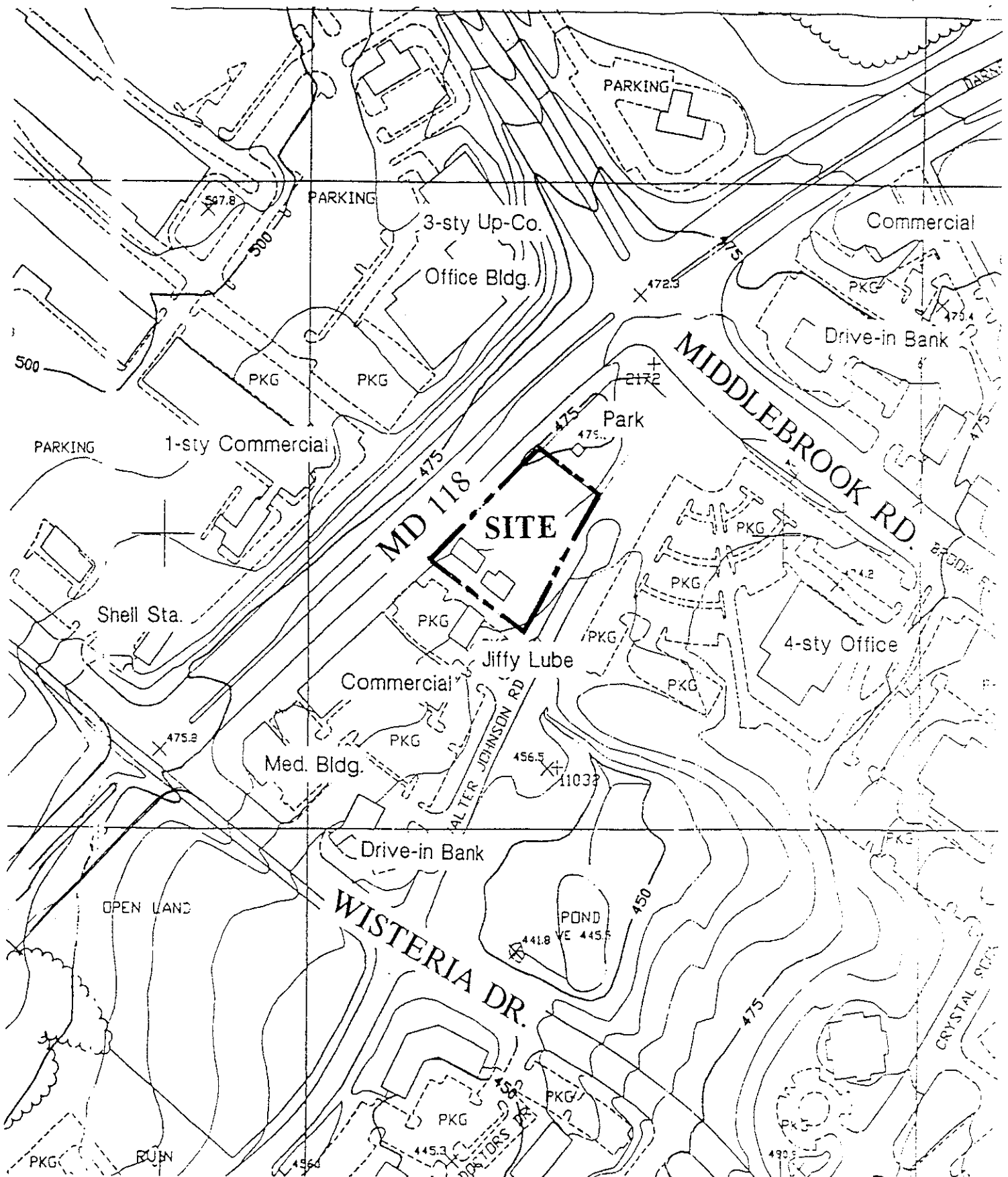
The subject property is made up of two parcels of land. The northern parcel, P742, is undeveloped, measuring 0.43 acres of land, and is classified under the Town Sector Zone. This parcel is relatively level, a few feet lower in elevation than the adjacent MD 118, and is covered with mixed grassy vegetation. Used autos for sale are sometimes parked near the MD 118 frontage. The southern parcel, P770, measures 0.51 acres, is classified under the C-5 Zone (low density, office commercial), and is developed with a 1 ½ story frame house and a two-story detached garage/office. The garage/office measures approximately 40' x 50', nearly as large as the house. This parcel also is relatively level, rising in elevation approximately five feet from Walter Johnson Road to MD 118. Vehicular access to the site is provided via a paved drive that runs along the southern edge of the site, past the house, terminating alongside the garage.

The relationship of the subject property to the road network and surrounding development can be seen on the vicinity map reproduced on the next page (Ex 16 (b) at 11).

B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be properly evaluated. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application, focusing on the nature of the proposed use more than on the nature of the area. In general, the definition of the surrounding area in a floating zone case takes into account those areas that would be most directly affected by the proposed development.

In the subject application, M-NCPPC Technical Staff opined that the surrounding area for zoning purposes coincides with analysis area TC-4 as defined in the *Adopted and Approved 1989*



Germantown Master Plan. The Master Plan describes analysis area TC-4 as a one-acre area between MD 118 and Walter Johnson Road, northeast of Wisteria Drive and southeast of Middleburg Road. See Ex. 3. Although its precise outlines are not made clear in the record, analysis area TC-4 appears to be limited to the southern portion of the property that is the subject of this application.

The Applicant recommends defining the surrounding area more broadly to include all properties on MD 118 from Wisteria Drive to Middlebrook Road, plus the properties confronting the subject site on MD 118, Middlebrook Road and Walter Johnson Road that have a view of and can be viewed from the subject property. Tr. at 27-28. In other words, the surrounding area would include all the properties on the same "block" as the subject property, plus frontage properties on MD 118, Middlebrook Road and Walter Johnson Road.

The Hearing Examiner finds that the surrounding area suggested by Technical Staff is too limited to accurately represent the geographic area most directly affected by the potential development of the subject property. On the other hand, the surrounding area recommended by the Applicant is somewhat too extensive; it includes property on the other side of MD 118, a major highway, and on the other side of Middlebrook Road, which the Hearing Examiner believes should not properly be included in the surrounding area. I will adopt, instead, a definition of the surrounding area that includes all properties on MD 118 from Wisteria Drive to Middlebrook Road, plus the properties confronting the subject site on Walter Johnson Road that have a view of and can be viewed from the subject property. Tr. at 27-28. In other words, the surrounding area would include all the properties on the same "block" as the subject property, plus frontage properties on Walter Johnson Road. Existing land uses in the surrounding area are described below.

Immediately adjacent to the subject property to the north/northeast, on the corner of MD 118 and Middlebrook Drive, is a one-half-acre urban park owned and operated by the M-NCPPC. The park is attractively developed with a gazebo, game tables, benches, a trellis, a stone monument feature and walkways. Portions of the park are planted with evergreen and deciduous trees, including mature

cypress and a red maple adjacent to the subject property. The main area for human activity in the park is within and around the gazebo, which is substantially screened by mature vegetation.

Immediately adjacent to the subject property on MD 118 to the south/southwest is a Jiffy Lube facility. Immediately south of the Jiffy Lube is a small retail center that includes a bank, restaurant, beer and wine store, tanning salon and other retail uses. Both the Jiffy Lube facility and the adjacent retail center are accessed from Walter Johnson Road, and are located on property classified under the C-3 Zone.

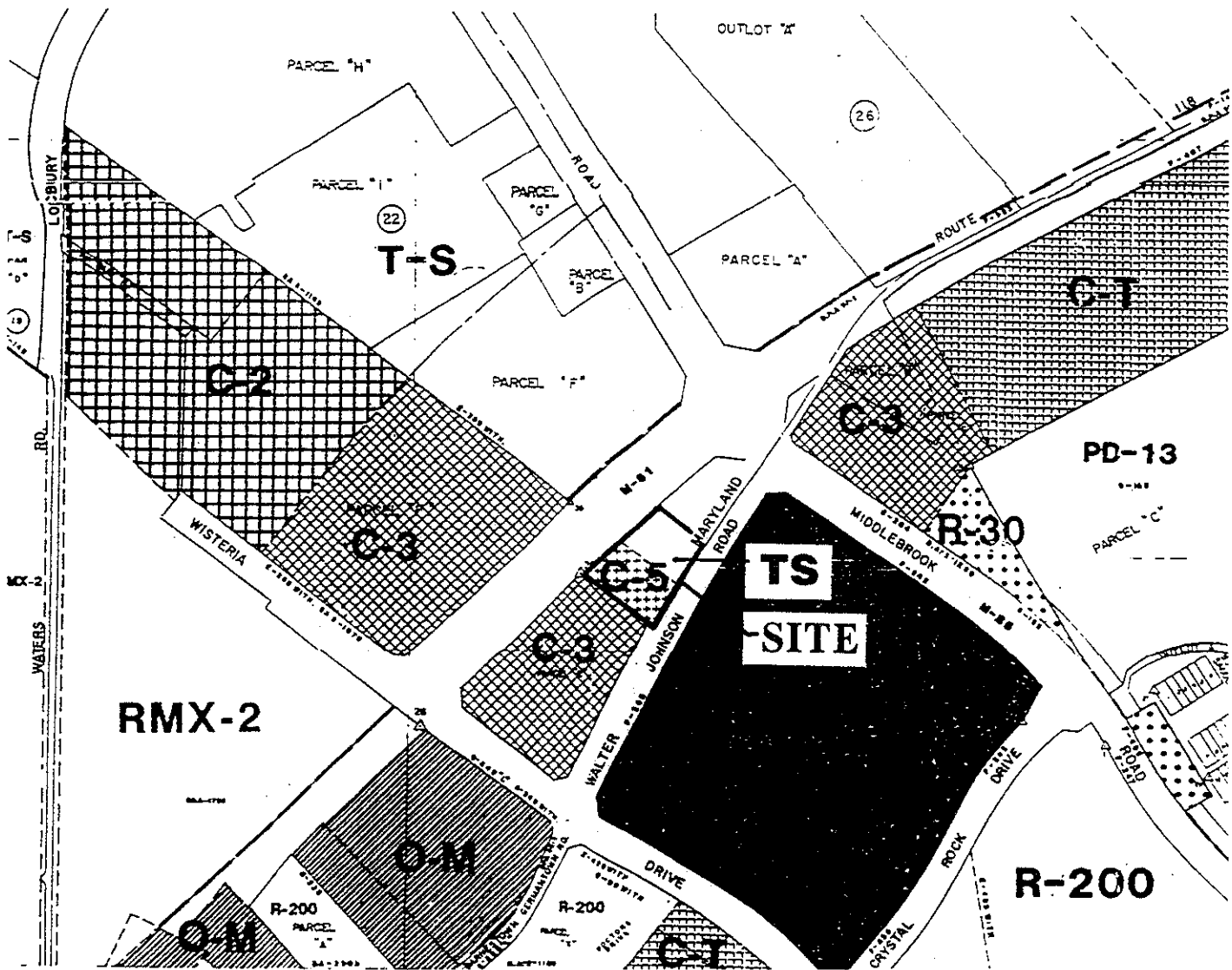
Confronting the subject property to the east/southeast across Walter Johnson Road is the unfinished Northlake Commerce Center, located in a C-O Zone and currently developed with two four-story office buildings facing Middlebrook Road, plus surface parking adjacent to Walter Johnson Road. Testimony at the hearing on this case indicated that the remaining land between the existing office buildings and Wisteria Drive was vacant, covered by grassy vegetation and scattered trees. The Hearing Examiner observed during a site visit conducted after the hearing, on Monday, September 16, 2002, that a large portion of the land between the existing office buildings and Wisteria Drive has been cleared of vegetation and is under construction.

C. Zoning History

As noted above, the subject site is made up of two parcels with different zoning classifications. The northern parcel, P742, was originally classified under the R-R (Rural Residential) Zone by the 1958 County-wide comprehensive zoning. The parcel was reclassified to the Town Sector Zone in 1968 by Zoning Text Amendment F-148. This zoning classification has since been reconfirmed in Sectional Map Amendments F-939 (1974), G-404 (1984), G-539 (1987) and G-652 (1990). Testimony at the hearing indicated that this zoning classification was made in connection with the overall Town Sector zoning for the Germantown Town Center. This particular parcel was physically cut off from the Town Center, however, by the construction of relocated MD 118.

The southern parcel, P770, was originally classified under the R-R (Rural Residential) Zone by the 1958 County-wide comprehensive zoning. The parcel was reclassified to the C-3 Zone (the

zone requested in this application) by Sectional Map Amendment ("SMA") 939 in 1974, reconfirmed by SMAs G-404 (1984) and G-539 (1987). The parcel was reclassified from the C-3 Zone to the C-5 Zone in 1990 by SMA G-652, in keeping with the recommendation of the *Adopted and Approved 1989 Germantown Master Plan*. The current zoning configuration is depicted below (Ex. 16 (b) at 12).



D. Master Plan

The subject property is located in an area covered by the *Germantown Master Plan* ("Master Plan"). The recommendations of the Master Plan are organized around a series of Villages and Analysis Areas. The southern portion of the subject property (parcel P770) appears to comprise Analysis Area TC-4. The Master Plan noted that this Analysis Area was, at the time, classified under the C-3

Zone in accordance with the Highway Commercial recommendation of the 1974 Master Plan, with a commercial use operating in a converted residential building. The Master Plan noted that “fragmented retail development, which often occurs in the C-3 Zone, is inappropriate along this visually important portion of MD 118 in the Town Center.” See Master Plan p. 42, reprinted in Ex. 3. The Master Plan recommended Analysis Area TC-4 for commercial office development up to three stories in height, with the C-5 Zone as the base zone. It stated that rezoning to the C-T (commercial transitional) Zone would be appropriate, with the owner’s consent. The Master Plan further recommended that due to the location of this property on Germantown’s “Main Street” (MD 118), adjacent to an urban park, “to achieve visual compatibility with existing and proposed uses, particular attention should be focused on building setbacks, landscaping along the road edge, and providing visual buffering of parking areas.”

Technical Staff opined that the proposed rezoning of the subject property from Town Sector and C-5 zoning to C-3 zoning would be consistent with the Master Plan vision for cohesive, rather than fragmented, retail uses along a major highway. This conclusion is supported by the fact that the proposed reclassification would provide for unified development of two relatively small parcels under a single zoning classification, with a single use specified as a binding element on the SDP. The evidence shows that most of the block along MD 118 between Wisteria Drive and Middlebrook Road is classified under the C-3 Zone and developed with retail and automobile-related uses. Thus, the character of this portion of the surrounding area is established, and is consistent with the proposed reclassification to C-3 zoning.

The Applicant’s land planning expert testified persuasively that the C-3 Zone would be appropriate at this location, adjacent to the high-intensity Town Sector zoning of the Germantown Town Center, particularly with existing C-3 zoning located adjacent to the subject site and farther away from the Town Center. The proposed reclassification would further the general planning principle of establishing more intense uses at the core – the Town Center – with use categories transitioning from more intense to less intense moving out from the core.

The C-3 Zone would require site plan review, which provides an opportunity to further the Master Plan's objectives related to townscape design. The submitted SDP complies with the Master Plan's directive regarding landscaping and visual buffering by specifying, as a binding element, that the Applicant would construct a masonry wall and landscaping adjacent to the common boundary with the adjacent M-NCPPC park "as determined at time of site plan approval." This element leaves the details of the landscaping and buffering for later Planning Board approval, but establishes the commitment to their implementation as a legally binding obligation, if the reclassification is granted and the SDP approved. Setbacks from MD 118 also are left to the province of the Planning Board, as the Applicant has requested a waiver of applicable setback requirements which, by law, may be granted only at site plan review. As a general matter, non-binding elements of the SDP and other evidence pertaining to visual aspects of the project suggest that landscaping, buffering and other visual elements would be implemented with appropriate consideration of the impact on the surrounding area.

E. Proposed Development

1. Binding Elements of the SDP

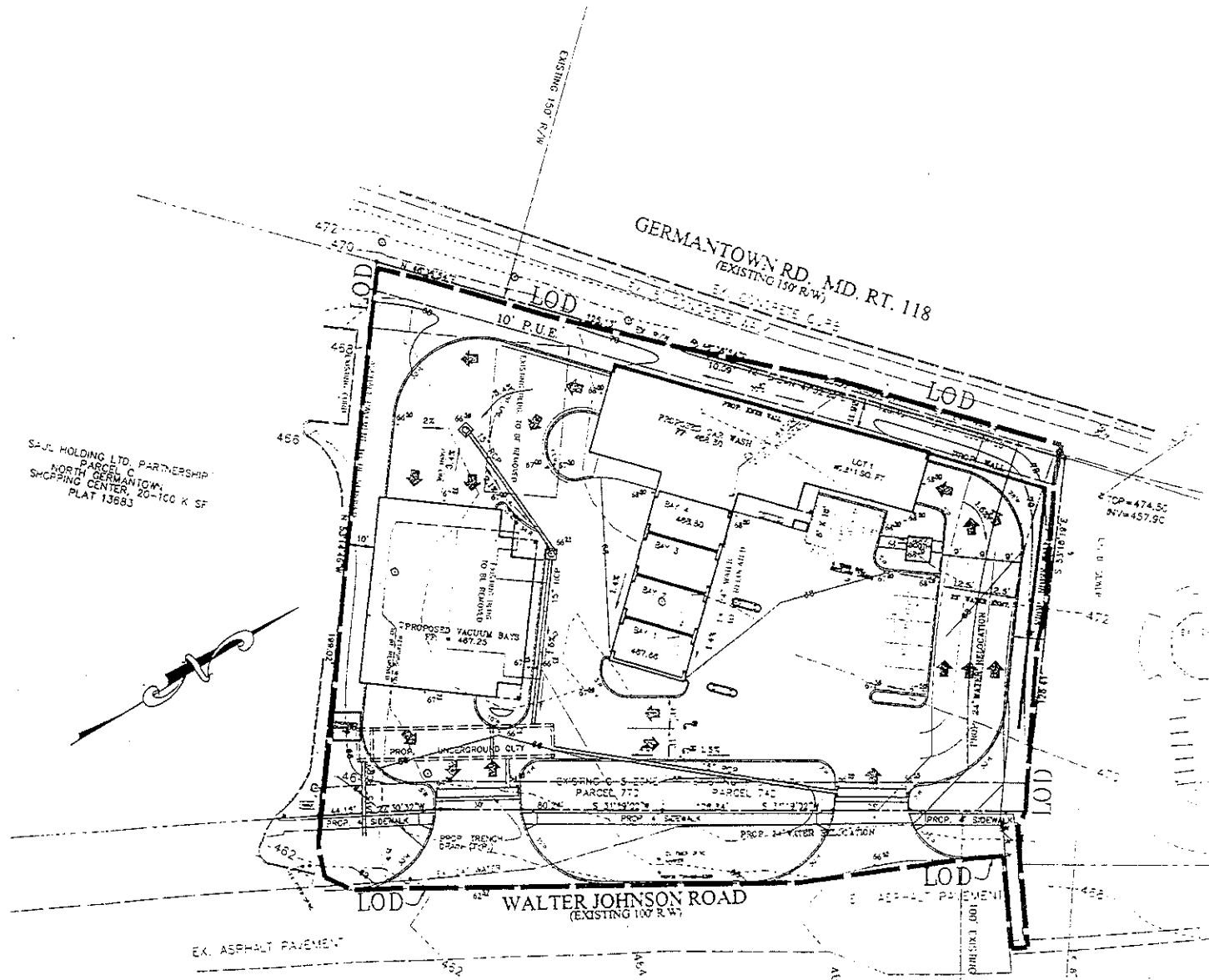
If the proposed rezoning is approved, the Applicant proposes to limit development under the C-3 Zone by means of the SDP. Binding land use elements of the SDP consist of the following:

- automobile car wash use;
- maximum building coverage of 23% (9329 sq. ft.);
- maximum building height of 42 feet;
- minimum green area of 28% (11,261 sq. ft.);
- no storage of waste material, auto parts, refuse and/or motor vehicles in setback;
- signage to comply with Code §59-F; and
- Applicant to construct a masonry wall and landscaping adjacent to common boundary with M-NCPPC park as determined at time of site plan approval.

2. Car Wash Operations

The proposed full-service car wash would consist of an enclosed automatic car-wash tunnel situated parallel to MD 118, a separate building at the south end of the site for interior vehicle

cleaning, and four self-serve car wash bays in the center of the site.¹ The SDP (Ex. 55), reproduced below, shows two driveways accessing Walter Johnson Road. The east driveway, closer to Middlebrook



¹ The Applicant's initial proposal included five self-serve car wash bays. The Applicant reduced the number of self-serve bays to four in response to concerns voiced by the Hearing Examiner and Technical Staff concerning the sufficiency of on-site vehicle stacking space. Removing one self-serve bay made additional space available on site as well as reducing the number of stacking spaces required.

BINDING ELEMENTS ON SDP

LAND USE SUMMARY

C-3 CONTROL	PERMITTED/REQUIRED	PROPOSED
AREA TO BE REZONED	N/A	40,811 SQ. FT.
PROPOSED USE	SEE MONTGOMERY COUNTY CODE AND RESTRICTIONS UNDER "OTHER BINDING RESTRICTIONS" AND "USE ELEMENTS" AND NOTES BELOW	*AUTOMOBILE CAR WASH
MAXIMUM BUILDING COVERAGE	35% (14,284 SQ. FT.)	*23% (9,329 SQ. FT.)
MAXIMUM BUILDING HEIGHT	42'	*42'
MINIMUM GREEN AREA	10% (4,811 SQ. FT.)	*28% (11,261 SQ. FT.)
PARKING TABULATION	ONE SPACE FOR EACH EMPLOYEE MIN., AND VEHICLE STACKING SPACE EQUIVALENT TO 5 TIMES THE VEHICLE CAPACITY OF THE AUTOMATIC CAR WASH AND 3 TIMES THE VEHICLE CAPACITY OF THE MANUAL CAR WASH BAYS MIN.	7 SPACES (INCL. 1 HDCP. SPACE), PLUS STACKING FOR 25 VEHICLES FOR AUTOMATIC CAR WASH AND 13 VEHICLES FOR MANUAL BAYS.
BUILDING SETBACKS: STREET R/W ON MASTER PLAN ALL OTHER LOT LINES	10' 0'	TO BE ESTABLISHED SEE ** BELOW
AUTOMOBILE RELATED USE SETBACKS ADJOINING COMM./IND. ZONE ADJOINING RESIDENT. ZONE CONTROLLED MAJOR HWY. OR LIMITED ACCESS FREEWAY ANY STREET WITH PLANNED R/W > 120' **	10' 50' 50' 50'	TO BE ESTABLISHED SEE ** BELOW
OTHER BINDING RESTRICTIONS	* 1. NO STORAGE OF WASTE MATERIAL, AUTO PARTS, REFUSE AND/OR MOTOR VEHICLES WILL BE ALLOWED WITHIN ANY REQUIRED SETBACK. * 2. PROPOSED SIGNAGE MUST COMPLY WITH SECTION 59-F OF THE MONTGOMERY COUNTY CODE. * 3. APPLICANT TO CONSTRUCT A MASONRY WALL AND LANDSCAPING ADJACENT TO COMMON BOUNDARY WITH MNCPPC PARK AS DETERMINED AT TIME OF SITE PLAN APPROVAL.	

USE ELEMENTS AND TRAFFIC MITIGATION IMPROVEMENTS SHOWN THUSLY * ARE BINDING.

* THIS DEVELOPMENT IS SUBJECT TO SITE PLAN APPROVAL PURSUANT TO SECTION 59-D-3 OF THE MONTGOMERY COUNTY ZONING ORDINANCE.

** BUILDINGS, STRUCTURES, ARCHITECTURAL COMPATIBILITY, PARKING ACCESS LOCATIONS, AND SETBACKS ARE ILLUSTRATIVE ONLY, AND WILL BE ESTABLISHED AT THE TIME OF SITE PLAN APPROVAL BY THE MONTGOMERY COUNTY PLANNING BOARD.

BINDING TRAFFIC MITIGATION

* APPLICANT WILL PROVIDE, SUBJECT TO GOVERNMENTAL APPROVAL, TRAFFIC MITIGATION / IMPROVEMENTS OR PARTICIPATE IN THOSE IMPROVEMENTS AS REQUIRED BY APPLICABLE GOVERNMENTAL AUTHORITIES TO REDUCE CLV TO LEVELS EQUAL TO BACKGROUND TRAFFIC CONDITIONS AS OF THE DATE OF THE PRELIMINARY SUBDIVISION PLAN APPROVAL FOR THE SUBJECT PROPERTY. APPROVAL OF ALL TRAFFIC MITIGATION / IMPROVEMENTS SHALL BE AGREED UPON WITH GOVERNMENTAL AUTHORITIES AND FINANCIALLY GUARANTEED OR CONSTRUCTED BY APPLICANT PRIOR TO ISSUANCE OF OCCUPANCY PERMITS FOR THE SUBJECT PROPERTY.

Road, would be used exclusively as an entrance. During periods of low to moderate volume, cars would enter the site from the east driveway and turn left for the self-serve bays or right for the automatic wash. Vehicles would stop at a small booth near the entrance to the car wash tunnel to state the services requested and pay, then drive directly into the tunnel. Testimony at the hearing indicated that because the Applicant proposes to use advanced equipment, and because interior cleaning and detail work would be provided in a separate building, any vehicle preparation work outside the tunnel would be extremely minimal. Drivers would remain in their cars through the tunnel, which would include both washing and drying. The Applicant does not intend to have employees stationed at the tunnel exit for hand-drying, as machine drying is expected to be sufficient.

Upon exiting the tunnel, drivers desiring interior cleaning would proceed into the vacuuming building, where they would exit their cars and walk through the building, picking up their cars on the other side and exiting via the west driveway. Drivers seeking only exterior cleaning would exit the car wash tunnel and make a sharp left to proceed along a drive aisle located between the vacuuming building and the self-serve bays, then follow the curve of the vacuum building around to the right to reach the west driveway.

Vehicles using the self-serve bays would enter a bay from the east, and upon exiting would turn left to proceed along the drive aisle between the vacuum building and the self-serve bays, around the curve of the vacuum building, to the west driveway.

During periods of heavy volume, the Applicant and other witnesses testified that during high-volume periods, it could become necessary to use cones and employees to direct vehicles to enter the site via the west driveway.² This would allow vehicles waiting for the automatic wash tunnel to form a queue on-site, between the landscaped setback area and the self-serve bays.

The automatic wash tunnel the Applicant intends to install is capable of processing 100 to 150 cars in an hour. The proposed hours of operation are 7 a.m. to 7 p.m. on weekdays, 9 a.m. to 5

² The Applicant's initial submission showed the west driveway as an exit only. Subsequent to the hearing, the SDP was revised to show use of the west driveway as both an entrance and an exit.

p.m. on weekends (Tr. at 192). The Applicant anticipates that because his equipment would not require employees to manually prepare cars for washing, drive them through the tunnel, or manually dry them, he would need no more than five to seven employees to operate the facility, even during peak hours (Tr. at 194). Employees would include an attendant at the entrance booth and workers inside the vacuuming building. The wash tunnel would be monitored via cameras by the booth attendant and by the Applicant, who would have an office on the second floor of the wash tunnel building.

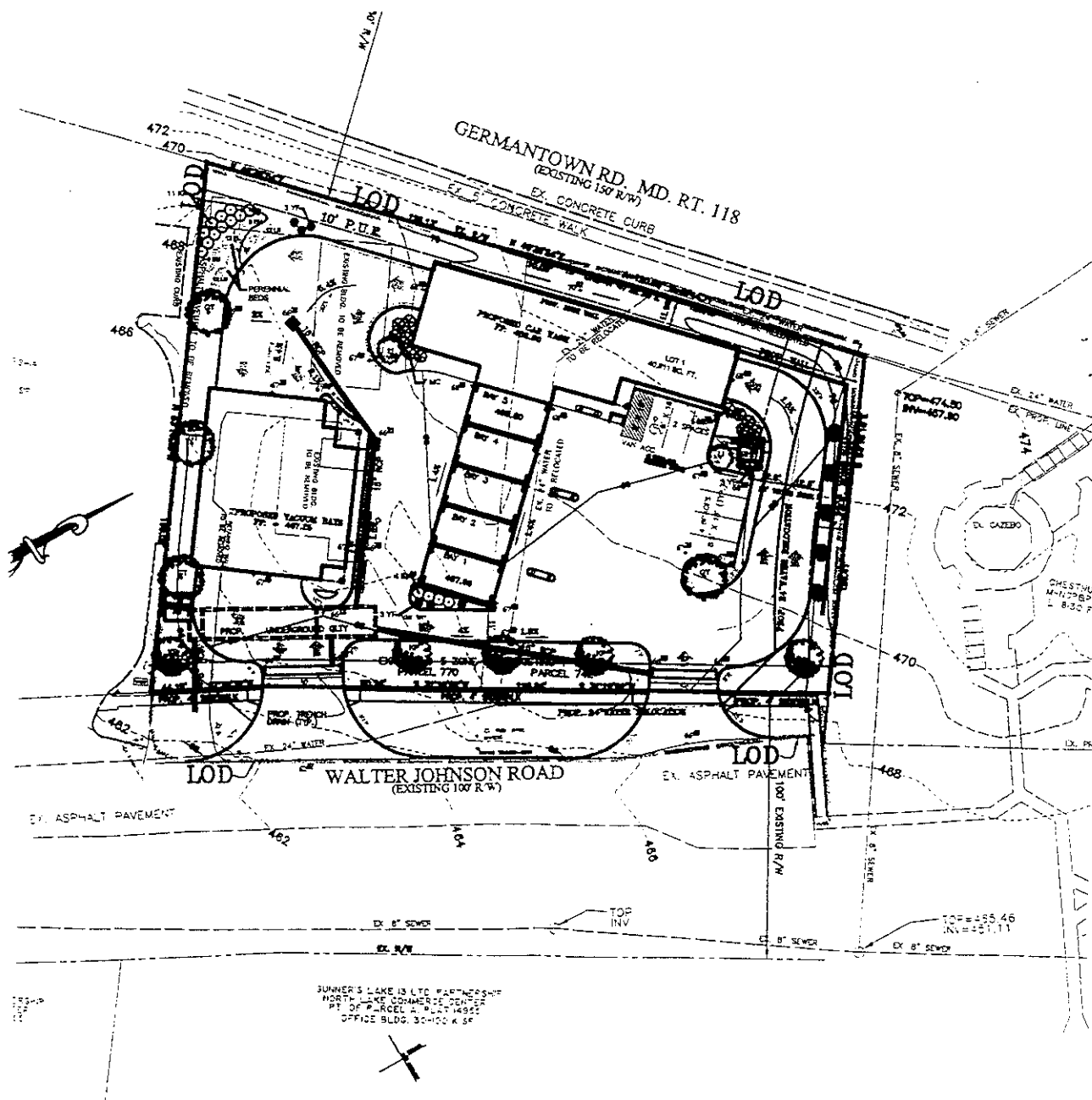
3. Architectural Elements and Landscaping

The Applicant's architect, a car-wash specialist with extensive experience, testified that building appearance and design at the subject site was specifically chosen for consistency with Town Center architectural standards and the historical context of the community. The plans call for high-quality materials and architectural detailing. At the suggestion of Technical Staff, a second story was added to the wash tunnel building to improve compatibility with the height and size of Town Center development. Similarly, the vacuuming building was designed to have the appearance of a two-story building. An artist's rendering of the proposed development (Ex. 38) displays an attractive, high-quality development.

The wash tunnel building would have large windows along MD 118 with the appearance of multiple storefronts. The wash tunnel building would end some 50-60 feet from the northeast corner of the site. At the suggestion of Technical Staff, the Applicant added a masonry wall, to be built from the northeast corner of the wash tunnel building to the property line and around the corner, extending about $\frac{3}{4}$ of the length of the property line adjacent to the neighboring park. This wall is designed to continue the visual line of the building to the edge of the property, block the view from MD 118 of cars lined up to enter the wash tunnel, and provide a visual and noise buffer for the park. The height of the wall is to be determined based on its function as a noise buffer, after completion of a detailed noise study. In addition, the level of pavement on the subject site would be several feet lower than the grade of MD 118, reducing the visibility of activities on site considerably.

Facing Wisteria Drive, the vacuuming building would have the same storefront windows treatment as the wash tunnel building.

The non-binding landscape plan (Ex. 42(d), reproduced below) shows shade trees, shrubs, and ornamental trees interspersed among the parking areas and buildings and along Wisteria Drive and Walter Johnson Road, shade trees or evergreens on the car wash side of the masonry wall, and a landscaped area with shrubs and perennials at the corner of MD 118 and Wisteria Drive.



4. Setbacks

The C-3 Zone includes special regulations governing setbacks and building coverage for automobile-related uses. See § 59-C-4.367(a). The table below is based on Technical Staff's analysis of compliance with applicable development standards (see Ex. 22 at 8):

	<u>C-3 Zone</u>	<u>Proposed Plan</u>
Building Height	42 ft. maximum	42 ft. (binding element)
Building Coverage	35% maximum	23% maximum (binding element)
Building Setbacks		
From streets over 120' ROW (MD 118)	50 ft. minimum	12 ft.
From lot lines w/commercial zoning	10 ft.	10 ft.
From lot lines w/residential zoning	50 ft.	N/A
Parking Setbacks		
From street	10 ft. minimum	10 ft.
From R-200 zoning front yard	40 ft.	N/A
Green Space	10% minimum	28% minimum (binding element)

As shown in the table above, the proposed development would not provide the required setback from MD 118. The Zoning Ordinance states that the Planning Board “may reduce this building setback at the time of site plan approval upon a finding that such a reduction will not adversely affect the character of the roadway and surrounding uses, taking into consideration setbacks on nearby properties.” § 59-C-4.367.

The existing buildings fronting on MD 118 on the block in question—between Wisteria Drive and Middlebrook—are set back ten feet from the road, with the exception of the Jiffy Lube, which is set back 90 feet. As a result, a ten foot set back at the subject site would help to continue the setback line established at the corner of Wisteria Drive, which is consistent with the recommended streetscape in the Germantown Town Center. Technical Staff supports a waiver of the 50-foot setback in this case based on a finding that with the proposed façade treatment along MD 118, landscaping and street trees proposed for the MD 118 frontage, and binding elements of the SDP, the planned 10-foot setback from MD 118 would not adversely affect the character of the roadway and surrounding uses. See Ex. 22 at 9. The evidence of record, as described above and in the previous section, supports Technical Staff's position.

It should be noted that if the rezoning is approved but the setback waiver is denied, the evidence suggests strongly that the present development plan will be abandoned as unworkable. The property owner would then be required to seek approval of a revised SDP to permit a different use on the site.

5. On-site Vehicle Stacking Capacity

Pursuant to Code § 59-G-2.11.1(h), a car wash must provide one parking space for each employee, plus vehicle stacking space equivalent to five times the vehicle capacity of the automatic car wash and three times the vehicle capacity of the manual car wash bays.³ Compliance with these requirements is vital to preventing off-site vehicular queuing on public streets. It has been the most contentious issue in this case, and will be discussed at some length.

The evidence indicates the Applicant's intention to have five to seven employees at the subject site. The site plan provides seven parking spaces, which is the minimum permitted under the Zoning Ordinance. If the Applicant were to ultimately employ more than seven persons at the site – including himself – he would be required to construct additional parking spaces to avoid violating the Zoning Ordinance.

The vehicle capacity of the car wash tunnel was the subject of intense debate in this case. Capacity was discussed in two senses of the word: the number of cars that can be in a car wash tunnel at one time; and (2) the number of cars that can be processed in the space of an hour. For purposes of determining the required number of stacking spaces on site, the relevant measure of capacity is the number of cars that can be in the tunnel at one time.

The Applicant represented that his tunnel would measure approximately 117 feet and would have a capacity of three cars at any one time. An opposition party, Bryan Radin, who owns and operates a car wash facility located within a mile or two of the subject site (at the intersection of MD 118

³ The cited section applies by its terms only to car wash facilities operating by special exception. The Applicant's site planner testified, however, that he was informed by staff at the Department of Permitting Services that these standards are applied to all car wash facilities, regardless of whether they require a special exception.

and MD Route 355), vigorously contested this representation. Mr. Radin maintained that six cars could be washed at one time in a 117-foot tunnel. He based this argument in part on his current car wash, at which he has run three cars at one time through a 60-foot tunnel, nose to tail with little space in between. Tr. at 216-218. Mr. Radin also presented written evidence suggesting that a 117-foot car wash tunnel would have a capacity of five to six cars at one time. This evidence included a letter from a Mr. John Forrest of New Dawn Distributing LLC dated August 21, 2002, which states that to determine the capacity of a car wash tunnel, his company (evidently a car wash equipment supplier) uses a rule of thumb of one car per 21 feet of tunnel space. See Ex 41 (c). Thus, a 117-foot tunnel would have the capacity for five cars at one time, plus a sixth car partially in at the entrance or exit of the building. Ex. 41(c). An additional letter from a Mr. Jeff Sturges of car wash manufacturer Belanger, Inc., dated September 9, 2002, describes typical job spacing as 20 feet per car, with one foot of space between vehicles when a system is running at maximum capacity. See Ex 50(a).

Mr. Radin also submitted into the record photographs of a full-service car wash located in Lancaster, Pennsylvania, which the Applicant described during the hearing as a model for his proposed facility.⁴ See Ex. 50(c), Tr. at 195. Mr. Radin characterized the photographs as showing cars stacked "almost on top of each other." Ex. 50(a) at 3. However, my review of the photographs suggests, to the contrary, that cars in the Lancaster facility are considerably more than one foot apart. Distances cannot be measured with great accuracy due to the lack of scale information and the effects of perspective, but in my judgment, the cars in the photographs appear to be at least six feet apart.

The Applicant, Antoine Haddad, contested Mr. Radin's arguments forcefully, although the evidence he presented was somewhat inconclusive. He maintained that Mr. Radin does not use and is not familiar with the particular equipment that Mr. Haddad intends to install. Mr. Haddad emphasized that to meet the highest quality cleaning standards, the capacity of a full-service car wash tunnel should be calculated based on an estimated vehicle length of 20 feet, plus 10 feet between cars. Tr. at 197. That

⁴ The photographs were submitted on September 9, 2002, after the hearing, but the Applicant's September 13 submission did not contest their validity. Accordingly, I will accept that they are, as represented, true photographs of the Lancaster facility discussed during the hearing.

calculation suggests a capacity of 3.9 cars at one time in a 117-foot tunnel. Mr. Haddad supplied a letter from a representative of the manufacturer whose equipment he intends to install at this location that suggests the optimal spacing is even greater, at 35 feet per car:

"In an effort to maximize equipment effectiveness, reducing utility consumption, and increase safety, we also recommend using a 35' per car spacing. This allows for a maximum length of 20' per vehicle with 15' of spacing in between. The 15' of spacing will allow for customers to safely load and unload their vehicles." Ex. 42(g).

Spacing of 35' between cars would result in a capacity of 3.3 cars at one time in a 117-foot tunnel. The persuasive value of this recommendation is undercut, to some degree, by the explanation that 15-foot spacing between vehicles "will allow for customers to safely load and unload their vehicles." The testimony was quite explicit that at the proposed location, customers would *not* exit their cars at the entrance of the car wash tunnel and pick them up at the other end, but would remain in their cars all the way through the tunnel. See Tr. at 83. Accordingly, loading and unloading would not be an issue, suggesting that 15-foot spacing is neither necessary nor indicative of the actual capacity of the tunnel.

Both Mr. Radin and Mr. Haddad submitted evidence, including testimony and manufacturers' product descriptions, concerning the number of cars that can be processed per hour in various types of car wash tunnels. The parties attempted to draw inferences from this data concerning tunnel capacity. Having analyzed the data closely, I conclude that the raw number of cars a particular tunnel can process in an hour at maximum speed is not, alone, determinative of the number of cars that can be in the tunnel at one time, which is the relevant capacity number for purposes of stacking requirements. Rather, the evidence suggests that the capacity of a tunnel at one time is a function of the tunnel size, the spacing of cars, and the speed at which the tunnel is operated – i.e., the number of feet each car travels per minute. Mr. Radin's evidence suggests that 40 feet per minute is the industry standard. The equipment that the Applicant intends to purchase for this site is capable of processing up to 150 cars per hour at top speed, but the manufacturer suggests using a top speed of 120 cars per

hour.⁵ This information does not, however, tell us how many feet a car would travel per minute. The faster cars can travel through the tunnel, the more likely it is that the system can process 120 cars in an hour with only three cars in the tunnel at a time. Conversely, if cars move more slowly through the tunnel, the number of cars in the tunnel at one time would have to increase for the system to process 120 cars in an hour.

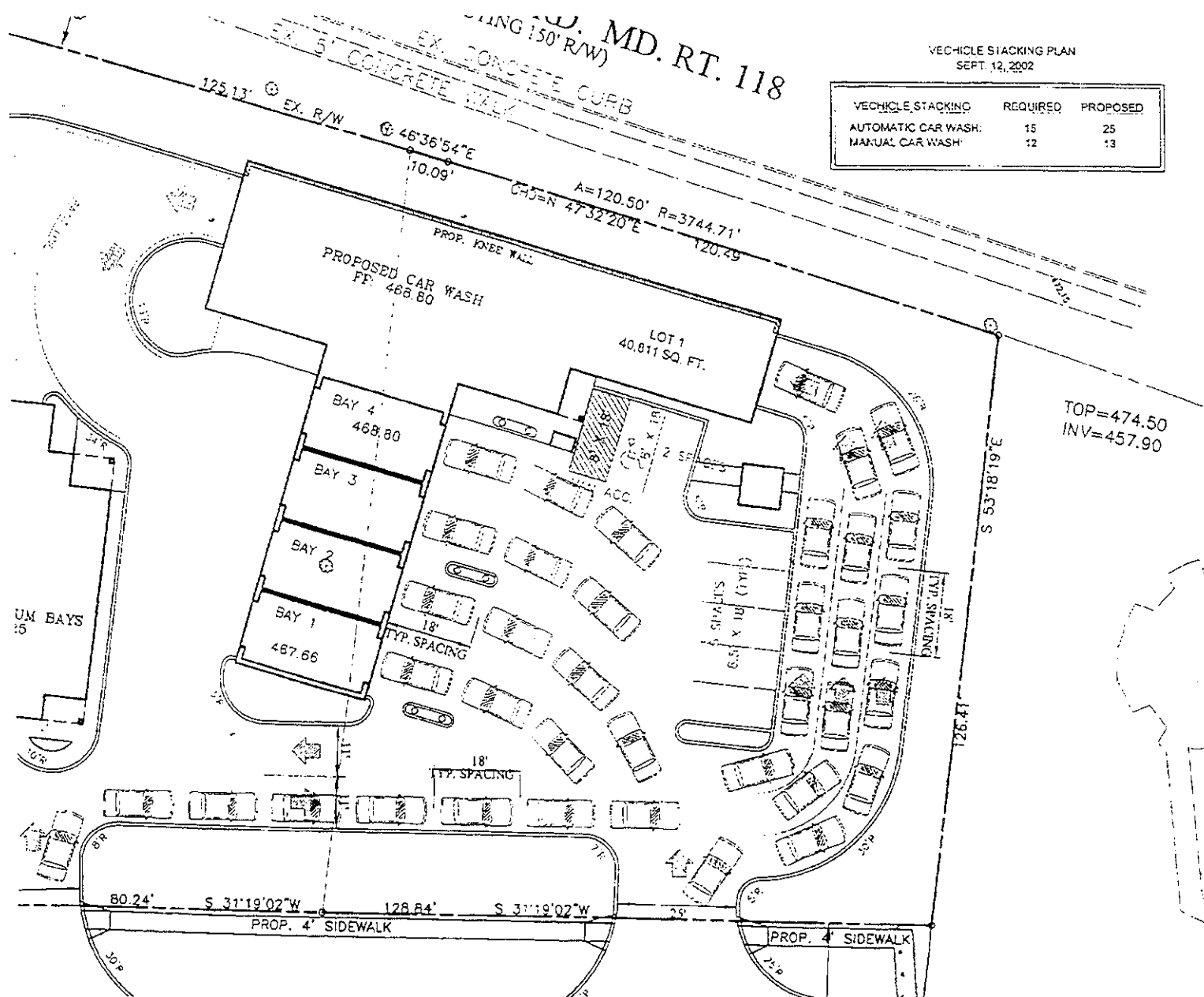
As the ambiguity of the preceding discussion makes clear, the evidence concerning the capacity of the car wash tunnel proposed at the subject site is inconclusive. The Applicant may intend to operate the system with only three cars in the tunnel at one time for purposes of economy, quality, and safety. However, persuasive evidence was presented suggesting that under other operating conditions, the 117-foot tunnel *could* accommodate up to five cars at one time. Accordingly, under Code § G-2.11.1(h), space should be provided on site for a queue of 37 vehicles: 25 stacking spaces for the tunnel, plus 12 for the self-service bays.

At the hearing, the Applicant presented testimony indicating that the site would have a total of 30 stacking spaces. After the hearing, the Applicant revised both its SDP and its plans showing stacking spaces superimposed on the SDP. See Exs. 42(a) and (e), 51(a) and (b), and 55. Ultimately, the final submissions show a total of 38 stacking spaces, as depicted on the drawing reproduced on the next page (Ex. 51(b)).

In addition to contesting the capacity of the Applicant's proposed tunnel, Mr. Radin argued that the number of stacking spaces required under the Zoning Ordinance is insufficient to avoid off-site queuing. He submitted for the record a letter from the operator of the Flagship Carwash on Rockville Pike in Rockville, which indicates that with a tunnel capacity of seven cars, that site has stacking space for 65 cars for the tunnel wash, and they still have to chase cars away from the line at peak periods to avoid off-site queuing. See Ex 41 (a). Two obvious distinctions should be noted: (1) Flagship is located on Rockville Pike, which has a much heavier traffic volume than MD 118 or Walter Johnson Road; and

⁵ Testimony during the hearing suggested a top speed of 100 cars per hour (Tr. at 133, 198-99), but this was contradicted by written evidence submitted post-hearing (Ex. 42(g)).

(2) the subject site has access only to Walter Johnson Road, a minor road that comes to an end at the subject site, so the risks associated with off-site queuing are risks of inconvenience, not direct threats to traffic safety. Moreover, the Applicant's evidence emphasized that unlike Flagship, which carries out interior cleaning manually at the entrance to its car wash tunnel, the proposed car wash would not require cars to be manually prepared for the tunnel wash and would provide interior cleaning *after* cars pass through the tunnel wash, reducing pre-wash delays to the bare minimum. See Tr. at 190, 173. As a



result, the line is expected to move more quickly and involve less waiting time. Technical Staff did not comment on the sufficiency of the Zoning Ordinance requirements for stacking. Based on the evidence as a whole, I see no compelling justification for imposing a stacking requirement greater than that established under the Zoning Ordinance and DPS practice.

The final stacking plan submitted in this case is less than ideal. It relies on efficient, cooperative use of available space by drivers who may not be aware of space constraints. It creates three rows of waiting cars that would need to merge into a single entrance point to the tunnel. It also relies on drivers' ability to maneuver safely around other cars at two tight spots: (i) moving either from or through the tunnel queue to access the self-service bays, and (ii) passing between the vacuuming building and the tunnel queue to exit the site. Finally, it requires any employees who arrive by car when the site is full (e.g. for a midday shift change) to either wait in or cut through the tunnel queue to reach a parking space, and to wait for a break in or cut through the self-service queue to exit a parking space. Nonetheless, the SDP provides the number of on-site stacking spaces required under the Zoning Ordinance. Technical Staff recommends approval of the SDP, noting that DPS would be requested to comment on design issues, including vehicular queuing, at the time of subdivision review. See Ex. 48. In addition, the Applicant outlined during his testimony operational steps that he plans to take, if necessary, to avoid off-site vehicular queuing during peak periods (using cones and employees to direct traffic, or temporarily closing the self-service bays or the vacuuming building). I conclude that the Applicant has demonstrated by a preponderance of the evidence that the SDP provides adequate space for on-site vehicular stacking.

F. Public Facilities

1. Transportation System

The Applicant's traffic study examined the impacts of the proposed rezoning and development on four intersections: MD 118 and Middlebrook Road, MD 118 and Wisteria Drive, Walter Johnson Road and Wisteria Drive, and Great Seneca Highway and Wisteria Drive. See Exs. 16(c), 42(c). Each of these intersections currently operates at an acceptable level of service, with critical lane

volume ("CLV") below the standard set for the Germantown Town Center Policy Area of 1,500 CLV during each of the peak hours. With the addition of "background traffic" expected from development that is approved but not yet constructed, however, both of the MD 118 intersections studied fail to satisfy the CLV standard.⁶

The Applicant estimated the volume of peak hour traffic to be generated by the proposed development based on traffic counts taken at the Flagship car wash in Rockville, adjusted to account for a lower number of self-service bays at the proposed site.⁷ This analysis indicated that with projected traffic from this site added to existing and background traffic, traffic conditions at the two MD 118 intersections studied would further deteriorate.

The applicant has agreed as a binding traffic mitigation element to fund or participate in the funding of traffic mitigation improvements "as required by applicable governmental authorities to reduce CLV to levels equal to background traffic conditions as of the date of preliminary subdivision plan approval." See Binding Traffic Mitigation on Ex. 55. Technical Staff has specified four traffic improvements that it plans to recommend as part of the Adequate Public Facilities review for this property. See Ex. 22 at 9-10. Taking the expected effect of those improvements into account, the two MD 118 intersections studied would operate at a better level than currently estimated with background traffic, indicating no adverse effect from this development. The results of the traffic study are summarized in the table below.⁸

⁶ Background traffic recommended by Technical Staff included the proposed Euro Motors development on MD 118 between Middlebrook Road and Crystal Rock Drive, which is the subject of a Development Plan Amendment that is scheduled to come before the Council on October 15, 2002.

⁷ The Applicant's traffic study was prepared based on the original proposal for five self-service bays at the subject site, rather than four. However, the self-service bays generate a very modest amount of traffic during the peak hours, so the resulting overstatement of traffic effects is very slight.

⁸ The evidence shows three conflicts between CLV figures used by Technical Staff and those used by the Applicant. None of these discrepancies affect which intersections fail to operate acceptably under the various scenarios, nor do they affect the ultimate conclusions as to the need for mitigation and adverse effects after mitigation. The Hearing Examiner has chosen to rely on the figures provided by the Applicant.

Intersection Capacity Analysis Peak Hour CLV								
Intersection	Existing		Background		Total with Proposed Car Wash		Total after Mitigation	
	AM	PM	AM	PM	AM	PM	AM	PM
MD 118/Middlebrook Rd.	1108	1422	1717	2127	1722	2141	1615	2001
MD 118/Wisteria Dr.	911	1436	1575	2825	1593	2831	1506	2555
Walter Johnson Rd./ Wisteria Dr.	475	631	804	807	833	849	833	849
Great Seneca Highway/ Wisteria Dr.	725	1078	828	1273	833	1285	833	1285

Opposition party Bryan Radin provided evidence suggesting that the traffic volume on MD 118 is greater than represented by the Applicant's expert during the hearing. See Ex. 41(b). Technical Staff reviewed the information submitted and concluded that the average daily traffic ("ADT") on MD 118 in the area of the subject site is between 23,000 and 25,000 vehicles, which is higher than the ADT of 18,000 stated at the hearing. Ex. 49. However, the higher ADT did not affect Technical Staff's conclusion that with the Binding Traffic Mitigation proposed on the SDP, the proposed rezoning and development would not have an adverse effect on surrounding roadways. See Exs. 48, 49. In addition, the FY 02 Annual Growth Policy shows a positive capacity of 4,381 jobs as of June 30, 2002 in the Germantown Town Center Policy Area. Based on the evidence of record, I conclude that with the Binding Traffic Mitigation proposed on the SDP, the proposed rezoning and development would not have an adverse effect on surrounding roadways.

2. Water and Sewer

Water and sewer service is available at the subject site. Technical Staff opined that local service is adequate and the impacts of the proposed rezoning would be negligible. Uncontested testimony at the hearing established that in keeping with current standards for car wash equipment, the equipment planned at the subject site would reclaim and reuse about 90 percent of the water used in the cleaning process. See Tr. at 133-34.

G. Environmental

The proposed car wash would be required to comply with storm water management and forest conservation requirements. In addition, two potential environmental impacts on the adjacent park were examined at the hearing: noise and fumes.

1. Noise

Technical Staff identified noise from the car wash mechanical operations as the principal concern with regard to compatibility of the proposed use with the park. At Technical Staff's request, the Applicant provided on the SDP for construction of a masonry wall along the property line between the site and the park to provide noise mitigation. The Applicant agreed to contract with a noise expert to determine the extent of expected noise impact and the appropriate height and materials for the wall to provide effective mitigation. Preliminary noise tests conducted on August 1, 2002 demonstrated that under existing conditions, the noise level along the park's frontage with MD 118, ten feet from the roadway, range from the mid-70 decibel level up to the low 90-decibel level. Tr. at 95; Ex. 35. These noise levels -- not surprising at the intersection of MD 118 and Middlebrook Road -- already significantly exceed the county standard of a maximum daytime noise level of 67 decibels at the property line of a receiving area. Tr. at 96, 175-76. Moreover, the loudest noise source at the subject site would be the dryers located at the far end of the car wash tunnel, approximately 160 feet from the park boundary. Tr. at 131-32, 135. Under these circumstances, the Hearing Examiner is persuaded that, in collaboration with the Planning Board and its staff and with the help of a noise expert, the Applicant would be able to construct a masonry wall that would adequately mitigate the potential adverse noise effects of the proposed car wash.

2. Fumes

The opposition alleged that automobile exhaust fumes from cars waiting to enter the car wash tunnel would have an adverse effect on the adjacent park. No probative evidence was available concerning the amount of fumes likely to be generated, or whether the masonry wall along the property line would mitigate fumes to any meaningful degree. The Applicant's witnesses testified, however, that

because there would be no interior cleaning at the entrance to the tunnel, and because the equipment would be capable of very high speeds, cars would not be idling for long periods of time in the tunnel queue. Tr. at 140. In addition, as the Applicant's witnesses noted, the park sits at a signalized intersection of a major highway that carries between 23,000 and 25,000 vehicles per day at that location and is therefore subject to fumes from idling vehicles on a continuous basis. The Hearing Examiner concludes, based on the preponderance of the evidence, that fumes generated by the proposed car wash would not have an adverse effect on the park.

H. Posting of Sign

Mr. Radin alleged that the sign required to be posted on the MD 118 frontage of the subject site to notify the public of the instant rezoning application was not properly posted. He stated that he drives past the site daily en route from his home to his business, and that on several occasions the sign was not elevated high enough to be visible from the roadway, was pushed back too far from the street, was lying flat on the ground, or was obscured by used cars displayed for sale. The Applicant responded that on those occasions when he was informed that the sign was down, he immediately returned to the site to re-install it, and that he requested the property owner not to park cars in front of the sign. The evidence tended to suggest that the sign was properly posted for an adequate number of days. In addition, the Applicant's counsel specifically notified the local citizens' associations by mail, and no correspondence regarding the case was received. To be absolutely positive that adequate notice was provided, the Hearing Examiner required the Applicant to monitor the sign for 30 days and submit a separate affidavit of posting, attesting to the fact that the sign had been properly posted for a 30-day period. See Ex. 53(a).

III. SUMMARY OF TESTIMONY

A. Applicant's Case in Chief

1. Philip E. Perrine, land planner.

Mr. Perrine was designated an expert professional engineer and land planning consultant. Mr. Perrine first reviewed the zoning history of this property, which is made up of two parcels. Both were

originally zoned R-R, which is now R-200. One was changed to C-3, then C-5, and the other was changed to Town Sector zoning. Mr. Perrine then described existing conditions on the property using an aerial photograph (Ex. 30). He described the development pattern in the area, which includes a variety of commercial uses in zones including C-3, C-O and Town Sector, as well as a limited amount of R-30 residential development. Adjacent development also includes a small urban park owned by the Park and Planning Commission. The park is located immediately adjacent to the subject site on the corner of MD 118 and Middlebrook Road and is developed with trellises leading up to a gazebo surrounded by a number of trees, and with a stone monument near the corner.

For purposes of assessing compatibility, Mr. Perrine defined the surrounding neighborhood more broadly than Technical Staff. He delineated an area along Wisteria Drive to the south including the properties confronting the subject site along Middlebrook Road and Route 118, and the frontage property across Walter Johnson Road. This includes not only the TC-4 analysis area that Technical Staff considered to be the relevant surrounding area, but also properties in the Town Sector Zone and on Middlebrook Road that are visible from the subject property. Mr. Perrine described this as a commercial area providing retail uses and services including a number of auto-related uses, drive-in banks, and a filling station, as well as some office uses. The closest residential property is a townhouse development about 750 feet across Middlebrook Road from the subject property. The only single-family residence located on Middlebrook Road has not been used as a residence for some time, but rather as a medical office pursuant to a special exception.

Mr. Perrine described the proposed access to the site from two driveway entrances off Walter Johnson Road. The State Highway Administration would not permit any direct access from Route 118. Mr. Perrine noted that the main building proposed on the subject site would be ten feet from the right-of-way for Route 118, in conformity with the building line established on most of the block on Route 118 between Middlebrook Road and Wisteria Drive. This location would require a waiver of setback requirements in the Zoning Ordinance, which requires a 50-foot setback from a controlled major highway

or limited access freeway for an automobile-related use. The Planning Board is authorized to grant such a waiver, and has endorsed the staff report that recommended granting the waiver.

Mr. Perrine opined that this application conforms with the purposes of the C-3 Zone and the *Germantown Master Plan*, adopted in 1989. The 1989 *Master Plan* recommended changing the zoning for this property from C-3 to C-5 or C-T. It discussed the need to avoid fragmented retail development which may occur in the C-3 Zone. It also discussed the need for compatibility with the adjacent urban park, and the need for a setback and visual buffer. Mr. Perrine stated that Technical Staff suggested it would be useful to have some two-story appearance for the buildings on the subject site, so an upper floor was created. He also described a screen wall suggested by staff to come from the end of the main car wash building on Route 118 to the corner of Middlebrook Road, turning the corner and continuing along the property line between the subject site and the park. He also noted that the proposed use would utilize all the available land, which is under single ownership but has split zoning. The proposed development would not result in the fragmented retail development that the Master Plan identified as a potential problem in the C-3 Zone. Mr. Perrine noted that Technical Staff found the plan to be generally in compliance with the goals of the Master Plan, and to have an appropriate relationship with the adjacent park.

Mr. Perrine testified that in his view, C-3 is a more appropriate zone for the subject site than the combination of C-5 and Town Sector. He noted that the portion of the site zoned Town Sector is essentially a remnant that was cut off from the major portion of the Town Sector zoning by the alignment of new Route 118. He also stated that the Town Sector Zone is a very intense zone and in its location across Route 118 from the subject site it is considered to be a CBD (Central Business District) area. Based on general planning principles, Mr. Perrine explained that more intense uses are in the core and use categories transition from more intense to less intense as you move outward from the core. Thus, he would consider it more appropriate to have C-3 zoning adjacent to the Town Sector, rather than the less intense C-5 Zone. This is particularly true considering the presence of C-3 zoning adjacent to the subject site and farther away from the Town Sector.

Mr. Perrine also discussed the chapter of the *Germantown Master Plan* that deals with "townscape design". He noted a real interest in the plan in the relationship between uses, such as setbacks and landscaping. The C-3 Zone would require site plan review, which is an important feature in relation to master plan conformity. In addition, the plan as proposed would satisfy the Master Plan guidance regarding visual continuity and setback frontages, provided that the setback waiver is granted to allow the main building to be established ten feet from the property line.

Mr. Perrine also opined that the proposed zoning and use would be compatible with the adjoining and confronting uses. In terms of building heights and scale, the proposed development would be comparable to adjacent uses. Based on its landscaping and layout, it would not cause any nuisance effect on the adjacent properties. He noted that the site has sufficient stacking space to avoid having cars lined up on Walter Johnson Road, but in fact that road is a dead end terminating at the end of this property so there would be no reason for cars to drive past the property on Walter Johnson Road.

Mr. Perrine stated that he does not believe the proposed zoning and use would be detrimental to the continued use of the neighboring urban park. He described the park as essentially oriented towards Route 118, with landscaping surrounding the gazebo on the side facing the subject property. In addition, the park is already impacted by traffic from MD 118 and Middlebrook Road, and associated noise and fumes. It sits at the intersection of two heavily traveled roads with stop lights so there is considerable traffic immediately next to the park.

Mr. Perrine also stated that the site would be adequately served by public water and sewer and other utilities. With regard to stormwater management, the proposed plan incorporates a water quality device on site. The Applicant would propose to pay a fee in lieu of water quantity control, primarily because of the size of the site.

Finally, Mr. Perrine noted that the proposed use would be complementary to other nearby uses, such as the Jiffy Lube next door and nearby Precision Auto. This would be consistent with the general principle in favor of consolidating trips.

On cross-examination, Mr. Perrine was questioned further about the compatibility of the proposed use and zoning with the adjacent park. He reiterated that based on the orientation of the park, the setting, existing trees and the proposed masonry wall, he believes the two uses are compatible. He was not able to provide a specific opinion on whether the wall was intended to block exhaust fumes from reaching the park.

2. James Crawford, land planner.

Mr. Crawford was designated an expert land planner and consultant. Mr. Crawford's firm prepared the SDP. He described meetings with Park and Planning staff that resulted in numerous changes to the SDP, including landscaping, construction of a wall instead of a fence, and narrowed driveways. He noted that Technical Staff preferred to have trees planted on the car wash side of the masonry wall, rather than on the park side of the wall.

Mr. Crawford described the planned landscaping, the site layout and how customers would proceed through the site depending on which services they wished to purchase. He noted that the Landscape Plan is not binding, but would be approved by the Planning Board at the time of site plan review. The SDP does include the masonry wall as a binding element and a minimum green area percentage. Mr. Crawford stated that traffic approaching the site on Route 118, heading south, would see very little activity on the site as the paved area is approximately five or six feet under the roadway level of Rte. 118, and the northbound lanes would effectively block much of the site. The view of the site for northbound traffic would be mitigated by landscaping and the wall so the only area that would be partially visible would be the southwest corner of the site. The green area fronting on Rte. 118 would slope up from the level of pavement on the site to the higher grade of MD 118. Mr. Crawford agreed with Mr. Perrine that the proposed use would be compatible with surrounding land uses and buildings. The proposed buildings would be a very high quality construction, compatible with building materials used in the Town Center across MD 118. The site would also have considerably more green area than most adjacent sites.

Mr. Crawford explained how the site would satisfy minimum requirements for parking spaces and on-site vehicle stacking. He also testified that the masonry wall adjacent to the park boundary line would serve two purposes: visual screening and noise mitigation. He described the results of a noise study conducted by an acoustical engineer on August 1st of this year, which indicated that the park is currently receiving noise considerably in excess of County standards based on current conditions. Mr. Crawford opined that the proposed development would be compatible with the adjacent park, particularly considering existing vegetation and the proposed wall. Furthermore, the elevation of the driveway entering the car wash building would be some four feet below the elevation of the property boundary line. Mr. Crawford testified that the wall would be designed to break the sight line between the park and the noise source, to mitigate noise. Preliminary plans suggest that a six-foot solid masonry wall would accomplish this goal.

On cross-examination, Mr. Crawford conceded that while to the best of his knowledge only one employee would be working outside the building, there was no binding commitment with regard to that aspect of operations. Mr. Crawford declined to agree with a statement that changing the view from the park from its current vista, an open grassy site, to a masonry wall would not constitute an adverse impact. He did concede that specific cross-sections have not been prepared that would allow a precise calculation of how high the masonry wall would need to be to effectively mitigate noise.

3. Peter Pitman, architect.

Mr. Pitman was designated an expert in architecture. Mr. Pitman has extensive experience in the design of car washes, having designed or consulted on over two dozen car wash projects across the country. He reviewed the elevation for each of the proposed buildings, describing how the buildings would function. These include the tunnel for mechanical car washes which would have storefront windows facing Rte. 118, the tunnel on the first floor, and a second story with offices. Self-service bays would be located in the center of the site, with walls and a roof but open at both ends to allow vehicles to pull in and out. At the southwestern end of the site would be a separate building for interior cleaning and detailing, which would have the appearance of a second story, although in fact the building would

function on one level. This building also would have large storefront windows facing Wisteria Drive. Mr. Pitman emphasized that the design was based on compatibility with the Town Center development and the historical context of the community.

Mr. Pitman also discussed an artist's rendering (Ex. 38), which shows a view of the site taken from Rte. 118 northbound. This drawing used some artistic license by not showing vegetation or the grade difference from Rte. 118 which would have obscured much of the buildings and activity. Mr. Pitman described the appearance and design as very consistent with the Town Center development and the Up-County Service Center which is across the street on MD 118, in terms of materials, detailing and massing. Mr. Pitman opined that the buildings proposed for this site would be compatible and harmonious with development in the surrounding area not only in terms of appearance but in terms of height, size and nature of the use. He noted that about one-third of the car washes he has worked on have an oil change facility on the property. Thus, locating a car wash next to an existing Jiffy Lube would allow the two businesses to mutually support one another.

Mr. Pitman also opined that the proposed use would not be detrimental to the use and enjoyment of the adjacent park. He based this on the heavy vegetative screening in existence on the park property, as well as the beautifully detailed and constructed wall planned for the property line. Mr. Pitman noted that the heaviest noise generator associated with the car wash would be the dryers located at the end of the car wash tunnel farthest from the park.

Mr. Pitman also testified as to the speed of the car wash tunnel and water reclamation features. He stated that the system planned for this project would reclaim about 90% of the water used.

In response to questioning by the Hearing Examiner, Mr. Pitman testified that the preliminary lighting plans would rely on the buildings as the primary source of light, following the example of the Town Center buildings. He was not familiar with whether there would be any site lighting along the perimeter. Lighting plans are not detailed enough at this stage to specify whether the light fixtures would be partial or full cut-off fixtures.

On cross-examination, Mr. Pitman conceded that if the Planning Board does not approve the setback waiver, the need to move buildings back off of MD 118 would leave the site with so little space that he would not recommend pursuing the project at this location.

On re-direct, Mr. Pitman acknowledged that the Applicant is taking the risk that if he gets zoning and SDP approval but cannot get a waiver from the setback requirement he may not be able to proceed.

5. Lee Cunningham, land use and transportation planner.

Mr. Cunningham was designated an expert in land planning and transportation planning. Mr. Cunningham briefly described the roadways surrounding the site and confirmed that direct access would not be permitted from MD 118, but would instead be from Walter Johnson Road. He then discussed an analysis conducted of other car washes in the area.

Mr. Cunningham conducted traffic counts at the Flagship Carwash in Rockville off of Route 355 and at Dolly's Carwash off of Rte. 40 in Howard County near Ellicott City. He noted that Flagship Carwash is located essentially on Rte. 355, which has a traffic volume at least three or four times higher than the average daily traffic on Rte. 118. Mr. Cunningham indicated that the higher traffic volume indicates more opportunity for volume based on the number of vehicles passing the site. The field study counted the number of trips generated by cars using the automatic wash and the self-service bays. Mr. Cunningham's staff was not able to verify the number of employees on the site, but assumed all vehicles parked on the site were employees. These numbers were the basis for the trip generation figures used in Mr. Cunningham's report. The figures were adjusted with the intention of accounting for the difference in the number of self-wash bays – Flagship has more self-wash bays than proposed for the instant site.⁹

Mr. Cunningham included traffic generation for employees based on the number of employees observed at Flagship. He stated that he did not inquire how many employees would be on site at the

⁹ The Hearing Examiner noted an apparent error in the trip generation calculation based on the numbers observed at Flagship. As pointed out in a letter by an opposition party, it appears that the numbers for self-service bays and automatic car wash were transposed, and the wrong number was reduced to account for the difference in the number of bays at the proposed site. Supplemental information submitted by the Applicant after the hearing corrected the error and demonstrated that the ultimate conclusions are unchanged.

proposed MD 118 location because he did not consider employee vehicles to be a large number or an important issue.

Mr. Cunningham then explained capacity analysis conducted using the critical lane methodology employed in Montgomery County. Each of the four intersections analyzed are operating below the critical lane volume threshold under existing conditions. Two of the intersections would operate at unacceptable critical lane volumes with the inclusion of background traffic. However, with mitigation in the form of roadway improvements, critical lane volume numbers could be reduced to below the levels calculated with background conditions. Thus, Mr. Cunningham concluded that with mitigation, the proposed project would not have an adverse effect on roadway capacity. Mr. Cunningham noted that in the absence of background traffic, the traffic anticipated from the proposed development on the subject site would not cause any of the intersections to have critical lane volumes exceeding the established threshold. He also stated that the right-of-way for the roadways where improvements would be made to mitigate additional traffic is wide enough to accommodate the additional lanes that would be necessary.

Mr. Cunningham testified that there is adequate sight distance to accommodate vehicles entering and exiting the property in a safe and efficient manner. He opined that the proposed zoning and development would not have any adverse effect on traffic flow or circulation along MD 118 or Wisteria Drive. He further opined that the proposed zoning and development would not result in any adverse interior queuing or circulation problems.

With regard to potential noise impact, Mr. Cunningham stated that during his ten years with the Montgomery County Planning Commission, he received training and certification in noise pollution abatement. He stated that the County noise standards (Chapter 31 B of the Code) require measuring noise at the property line, as was done by the noise consultant in this case. The County regulations state that a use cannot produce a level of noise that exceeds a specified decibel level at the property line. In light of that standard, and the fact that the proposed facility would use modern equipment that is quieter than historically was available, with the noisiest component of the machinery located away from the park, the impact of noise on the park would be minimized.

Under questioning by the Hearing Examiner, Mr. Cunningham described in some detail the pattern for on-site vehicle stacking. He explained that at high volume times, an employee would be used to direct drivers where to line up to avoid off-site queuing. Mr. Cunningham testified that there would be adequate space on site to provide the number of stacking spaces required under the County's regulations for car washes. Employees also would be used to direct cars on-site in case an access problem developed between customers entering and leaving the site, and between customers standing in a queue and employees trying to reach parking spots.

5. Antoine Haddad, Applicant.

Mr. Haddad was designed an expert in the operation of carwash facilities. He owns and operates three automobile filling stations in Germantown along Rte. 355, all of which have car washes associated with them. He described the present proposal as not a typical car wash, but one using the latest methods. The concept for the proposed car wash encloses all cleaning and drying activities within the automatic tunnel. It allows people who want only the exterior wash to go quickly through the automatic tunnel and leave the site, rather than waiting and paying for interior cleaning that they may not want.

Mr. Haddad also addressed the issue of on-site stacking and site circulation. He testified that in the worst case scenario, if lines of cars develop he would use cones and employees to direct cars where they need to go. If business were so heavy that traffic circulation or stacking problems developed, they could take such steps as closing the self-service bays or closing the vacuuming building. This would allow the business to maintain a manageable flow on the site.

Mr. Haddad testified that the car wash would be open from 7:00 a.m. to 7:00 p.m. during the week, and 9:00 a.m. to 5:00 p.m. on the weekend. He confirmed that most of the lighting would come from the buildings, but that specific exterior lighting plans have not been developed.

Mr. Haddad estimates that only five to seven employees would be needed to run the car wash during peak hours. This would include an attendant at the entrance and workers inside the vacuuming building. No employee would be on duty on a regular basis inside the car wash tunnel, but the tunnel would be monitored via cameras by the booth attendant and by Mr. Haddad in his upstairs office.

Mr. Haddad stated that he has been living in Germantown since 1996 and was eager to purchase the subject property to be part of the ambiance of the Town Center

6. James Fieser, real estate broker.

Mr. Fieser is the listing broker for the subject property, which is currently under contract for sale to the Applicant. He testified that opposing party Bryan Radin who participated in the hearing in opposition to the rezoning contacted him approximately 1 ½ years ago with regard to purchasing the subject property for a car wash. Mr. Fieser testified that Mr. Radin offered less than the asking price of the property and was not forthcoming with regard to a written contract.

7. Raymond L. Frazier, property owner.

Mr. Frazier has owned the subject property and operated a business there for approximately the last 15 years. He confirmed Mr. Radin's attempt to purchase the property to operate a car wash. He also stated that typically he is on the property half of the day, Monday through Friday, plus portions of the weekend. He has had occasion to go to the adjacent park and has observed very little usage by the general public. He described the majority of the usage as teenagers from a nearby high school who are drinking, smoking and playing music. He has observed trash and debris on site, some of which has spilled over onto his property.

Mr. Frazier also testified that when the property was rezoned in 1999, he received no notice of either the change in the Master Plan or the downzoning. Any correspondence that was sent did not reach him. He learned about the rezoning only when a prospective purchaser inquired.

B. Opposition's Case in Chief

1. Bryan Radin.

Mr. Radin was designated an expert in the operation of car wash facilities. He is a resident of Germantown and also owns and operates a car wash at the intersection of Routes 118 and 355. He states that approximately 18 months to two years ago he ended negotiations with Mr. Frazier concerning the purchase of the property when he learned about the current zoning. Mr. Radin stated that he consulted with Sue Edwards of the Park and Planning Department about the possibility of having the

zoning changed to allow a car wash. He stated that Ms. Edwards informed him that the Master Plan called for Town Sector zoning on a portion of the property, and the portion that had been C-3 was recently down zoned to C-5 because the drafters of the Master Plan did not want a high traffic, highway-oriented use at this site adjacent to a public park. Ms. Edwards told him there was no possibility of changing the zoning. On the basis of this information, Mr. Radin concluded that there was no point in pursuing the property.

Mr. Radin also testified as to the capacity of car wash tunnels. Based on his experience with his current car wash and other car washes he has run, Mr. Radin opined that the 117-foot tunnel proposed by the Applicant in this case would have a capacity of 6 cars in the tunnel at one time. He testified that cars can be run through continuously nose to tail in such a system. Based on code requirements requiring stacking space equal to five times the vehicle capacity of an automated car wash, this would require 30 stacking spaces on site for the automated tunnel, in addition to the spaces required for the self-serve bays.

Mr. Radin attempted to contest the testimony by the Applicant's experts that the existing retail buildings at the corner of Wisteria Drive and Md. Rte. 118 are set back 10 feet from the right-of-way. Mr. Radin stated that he had measured the distance from those buildings to the top of the curb at 35 feet. These measurements ignored the fact that the top of the curb is not necessarily coincident with the right-of-way line. As confirmed by information submitted by the Applicant post-hearing (see Exhibit 42 F), the buildings are in fact 10 feet from the right-of-way line.

Mr. Radin further testified that he drives by the subject site on a daily basis traveling from his home to his place of business, and has observed on many occasions during the last several months that the zoning sign is not visible. At times it was not elevated high enough to be visible from the roadway elevation, or it was pushed back too far from the street. On some occasions, it was blocked by used cars parked on the site for sale purposes. At other times it was lying flat on the ground. He indicated that on several such occasions he called the Office of Zoning and Administrative Hearings to report the status of the sign. Mr. Radin also opined that even with state of the art equipment to run a first-class facility with

high quality cleaning, it is necessary to have personnel outside the tunnel prepping cars and doing the final touches. He maintained that not all parts of cars get touched by automated car wash equipment and that blowers cannot get a car completely dry. Thus, there is a need for employees working outside the tunnel.

C. Applicant's Rebuttal

On rebuttal, Mr. Haddad attempted to discredit Mr. Radin's testimony. He stated that Mr. Radin is not familiar with the type of equipment and does not know the capacity of the tunnel that Mr. Haddad intends to use. He cited a car wash similar to the one he intends to operate, located in Lancaster, Pennsylvania, where the car comes out perfectly clean and dry, better than a towel dry. He credited Mr. Radin's testimony to a lack of experience about the particular equipment involved. With regard to tunnel capacity, he stated that putting cars end to end in a tunnel would prohibit brushes from reaching the front of the car and the back of the car. He believes that providing a high quality cleaning job requires maintaining a significant distance between the cars while they are in the tunnel, rather than having employees prepping and drying a car by hand.

IV. ZONING ISSUES

A floating zone may be located within sections of the County that are deemed appropriate under preset standards of the Zoning Ordinance and the State Zoning Enabling Act. The C-3 Zone is a floating zone and requires evaluation in terms of eligibility under the purpose clause, compatibility with existing and planned land uses in the surrounding area, and its relationship to the public interest.

A. Purpose Clause

The purpose clause of the C-3 Zone is found in Code §59-C-4.360 and provides several alternative grounds for threshold eligibility: the property must (1) front on and have access to heavily traveled major highways with planned or existing pavement of at least six lanes; or (2) be in a location

recommended for the C-3 Zone by the applicable master plan; or (3) be in a location adjacent to properties previously or concurrently zoned C-3. The subject property satisfies this requirement in two ways. First, it fronts on MD 118, a heavily traveled major highway with six lanes. Second, while it is not in a location recommended for the C-3 Zone by the master plan, it is located adjacent to property currently zoned C-3 (the Jiffy Lube site).

The purpose clause for the C-3 Zone further states that it is intended to provide sites for commercial uses “that may require large land areas and do not depend upon adjoining uses for . . . comparison shopping or pedestrian trade; and sites for commercial facilities which are related to the traveler and highway user.” The proposed development satisfies this component of the purpose clause as well. The proposed use requires a sufficiently large amount of land to accommodate washing facilities, circulation, and queuing areas. Given the nature of the use, it would not rely on adjacent uses for comparison shopping or pedestrian trade. Moreover, as an auto-service use, the car wash is clearly related to the traveler and highway user.

Finally, the fact that vehicular access to the subject site would be available only from Walter Johnson Road would satisfy the intent stated in the purpose clause that “direct access to the highway be controlled by restricting development to service road access.” Thus, the proposed rezoning and development would comply with the requirements of the purpose clause.

B. Compatibility

An application for a floating zone reclassification also must be evaluated for compatibility with existing and planned land uses in the surrounding area. Here, the proposed use would be compatible with most of the existing and planned land uses in the surrounding area, which include commercial, office and retail uses. The Applicant has paid special attention to constructing a development plan and building plans that would be compatible with nearby uses in terms of bulk, height and architectural style. The MD 118 frontage would have the appearance of multiple store fronts with large windows, with the line of the building continued to the property boundary and around the corner by a masonry wall that would provide a noise buffer and visual screening. If the proposed setback waiver

were granted, the building line along the MD 118 frontage of the subject site would be consistent with the building line established at the corner of Wisteria Drive and MD 118, resulting in a ten-foot setback for all buildings in the block between Wisteria Drive and Middlebrook Road except for the Jiffy Lube.

As stated by Technical Staff, “[c]ompatibilty of the proposed C-3 Zone to the surrounding uses is most challenged next to the urban park.” Technical Staff identified potential noise impacts as the greatest concern. As discussed earlier, the Hearing Examiner concludes based on the preponderance of the evidence that, in collaboration with the Planning Board and its staff and with the help of a noise expert, the Applicant would be able to construct a masonry wall as identified on the SDP that would adequately mitigate the potential adverse noise effects of the proposed car wash.

The opposition contended at the hearing that the proposed use would adversely affect the park because an individual looking from the park toward the subject site would see a masonry wall instead of a largely open, grassy area. The opposition attempted, unsuccessfully, to extract an opinion from the Applicant’s expert witnesses that this change would constitute an adverse impact. All of the witnesses opined that the proposed use would not have an adverse visual impact, precisely because the masonry wall, as well as existing mature trees within the park, would screen the view of the car wash operations from park users. See, e.g., Tr. at 107-109. Similarly, Technical Staff opined that the proposed development would be compatible with the surrounding area. The Hearing Examiner concludes, based on the preponderance of the evidence, that the proposed rezoning and development would be compatible with the surrounding area.

C. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities.

Although the proposed rezoning is not consistent with the specific recommendation in the Master Plan for C-5 zoning on a portion of the subject site, it is generally consistent with the goals stated in the Master Plan for the subject site and surrounding area. The proposed rezoning and development would not lead to fragmented retail development, which was that Master Plan's chief concern about classifying the subject site under the C-3 Zone. Moreover, the controls imposed by the binding elements of the SDP and the requirement for site plan review would further Master Plan goals regarding visual compatibility with existing and proposed uses.

Both the Planning Board and its Technical Staff have recommended approval of the proposed zoning, which serves as a strong indication that the proposed zoning is consistent with current planning policies for this area of the County.

The preponderance of the evidence indicates that the proposed development would have no adverse impact on the area road network or other public facilities. As described in the extensive discussion of on-site vehicular stacking contained in Part II.E.5 above, the SDP provides adequate on-site stacking space to satisfy the requirements of the Zoning Ordinance. Together with operational steps that the Applicant has committed to make – using cones and employees to direct traffic, and closing the self-service bays and/or the vacuuming buildings if necessary during peak periods – the on-site stacking and circulation are adequate to avoid off-site queuing that could adversely affect traffic on Walter Johnson Road. Potential adverse effects on traffic at the intersections of MD 118 with Wisteria Drive and Middlebrook Road would be fully mitigated by the binding traffic mitigation element stated on the SDP, and no other potential adverse transportation effects have been identified.

As the Technical Staff indicated in its report, further refinements will be evaluated at the site plan stage where specific layout and design issues will be considered. The preponderance of the

evidence establishes that the proposed development bears sufficient relationship to the public interest to justify its approval.

V. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record following the close of the record, I make the following conclusions:

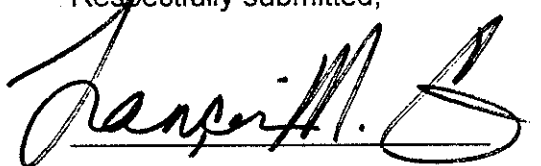
1. That the requested reclassification to the C-3 Zone complies with the requirements of the purpose clause of the C-3 Zone;
2. That the requested reclassification to the C-3 Zone would be compatible with existing and planned land uses in the surrounding area; and
3. That the requested reclassification to the C-3 Zone bears sufficient relationship to the public interest to justify its approval.

VI. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-799 for the reclassification from the Town Sector and C-5 Zones to the C-3 Zone of two parcels, P742 (0.43 acres, Town Sector Zone) and P770 (0.51 acres, C-5 Zone), comprising 40,811 square feet of land (.94 acres) located in the southeast quadrant of the intersection of relocated MD Route 118 and Middlebrook Road, Germantown, in the 9th Election District, be granted in the amount requested.

Dated: October 11, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Françoise M. Carrier", written over a horizontal line.

Françoise M. Carrier
Hearing Examiner